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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	No. P1300CR20081339
)	
Plaintiff,)	Div. 6
)	
vs.)	RESPONSE TO STATE'S LATE
)	DISCLOSURE IN VIOLATION
STEVEN CARROLL DEMOCKER,)	OF ARIZONA RULE OF
)	CRIMINAL PROCEDURE 15.6
Defendant.)	(71ST SUPPLEMENTAL
)	DISCLOSURE DATED JULY 12,
)	2010)
)	

Steven DeMocker, by and through counsel, hereby respectfully requests that the Court deny the State's Notice to Extend Time for Additional Disclosure pursuant to Rule 15.6(d) filed on July 12, 2010, and preclude the State from offering late disclosed witnesses and evidence at trial because of the State's failure to comply with Arizona Rule of Criminal Procedure 15.6.¹ This request is based on the due process clause, the

¹ The defense has not received any motion asking the Court to extend time for disclosure as required by Rule 15.6. The defense received two "Notices" of late disclosure and an affidavit in support of a motion, but no motion.

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JUL 14 AM 9:57

JULIANNE HICKS, CLERK

BY: B. Chamberlain

1 Eighth Amendment and Arizona counterparts, Arizona Rules of Evidence, Arizona
2 Rules of Criminal Procedure and the following Memorandum of Points and Authorities.

3 **I. HISTORY OF THE STATE'S FAILURE TO COMPLY WITH RULE 15**
4 **AND THIS COURT'S ORDERS REGARDING DISCLOSURE.**

5 The defense has repeatedly detailed the State's failures to comply with Rule 15
6 and the Court's orders regarding disclosure. The Court dismissed two death penalty
7 aggravators on April 8, 2010, as a sanction for the State's conduct. Thereafter, the State
8 continued to violate the Rule and the Court's orders. On April 28, the Court precluded
9 witnesses and evidence on the basis of the State's discovery violations from the State's
10 55-57th supplemental disclosures. On May 11, 2010, the Court again precluded
11 witnesses and evidence from the State's 59-62nd supplemental disclosures based on
12 disclosure violations. See May 11, 2010 Minute Entry. On April 28, the Court
13 reminded the State that if it did not comply with Rule 15.6, it would not be permitted to
14 use late disclosed evidence at trial.

15 Trial started on May 4, 2010 with jury selection, and opening statements took
16 place on June 3. On June 17, Judge Lindberg became ill and was unable to continue
17 with trial. Judge Darrow was assigned to the case on July 2.

18 On July 7, the State filed a motion pursuant to 15.6(d) seeking leave to use 11
19 late disclosed witnesses and over 500 pages of late disclosure and 6 late disclosed CDs
20 at trial. The State did not file the required "immediate" notice for this disclosure. On
21 July 8, the State delivered over 400 pages of late disclosed bank records and filed a
22 "supplement" to its motion to extend time. On July 8, the defense filed its "Opposition
23 to State's Late Disclosure and Failure to Comply with Arizona Rule of Criminal
24 Procedure 15.6." On July 9, a hearing was set to address these issues. Instead, the
25 State, for the first time, indicated during the hearing that it intended to call John Sears as
26 a witness as to the Hartford Life Insurance issues. On July 12, as directed by the Court,
27 the defense filed its Objections to the State's Late Disclosed, Irrelevant Hartford
28

1 Documents and Witnesses. The State did not comply with the Court's order and filed
2 instead an under seal Motion.

3
4 **II. The State's Most Recent Disclosure Violations.**

5 On July 12, the State filed a Notice and Affidavit in support of a Motion to
6 Extend Time for Additional Disclosure Pursuant to Rule 15.6(d). The State did not file
7 a Motion requesting the Court to extend the time to provide disclosure under Rule
8 15.6(d). . The State also delivered to the defense its 71st Supplemental Disclosure on
9 the same date. The disclosure identifies seven new witnesses (two were identified in the
10 State's third addendum to its witness list filed on July 7). These witnesses include Mr.
11 DeMocker's parents and the attorney for Mr. DeMocker's daughter as Trustee for her
12 mother's estate as well as his paralegal. The State also disclosed bank records of Mr.
13 DeMocker's parents and jail call transcripts for 12 jail calls. All but two of these jail
14 calls have been precluded by prior order of this Court. The State also disclosed the last
15 will and testament of Jim Knapp as well as journal pages from Mr. Knapp. Two CDs
16 were also disclosed, one of a jail visit that took place on July 2, 2010. This CD is
17 precluded by prior order of the Court as it was not disclosed within three days.

18
19 **III. The State's Most Recent Disclosure Should Be Precluded Based on**
20 **Arizona Rule of Criminal Procedure 15.6, Arizona Rules of Evidence**
21 **401, 402, and 403 and The Court's Prior Orders.**

22 Pursuant to Arizona Rule of Criminal Procedure 15.6(b), if a party determines
23 that additional disclosure may be forthcoming within thirty (30) days of trial, it is to
24 notify the court and other parties "immediately" of the circumstances and when the
25 disclosure will be available. Section (d) of the same rule provides that if a party seeks
26 to use material that was not disclosed seven (7) days prior to trial, the party must file a
27 motion and affidavit seeking leave of court to use the material or information. The
28 Court may either grant or deny the motion. If the Court grants the motion, the Court
may also issue sanctions. In considering whether to grant the motion, the Court is to

1 consider whether “the material or information could not have been discovered or
2 disclosed earlier even with due diligence and the material or information was disclosed
3 immediately upon its discovery.”

4 The State has violated both subsection (c) and (d) of this Rule. On July 12, the
5 State filed a “Notice” of late disclosure listing some, but not all, of the evidence it late
6 disclosed to the defense on that same day. This does not comply with Rule 15.6(c)’s
7 requirement to “immediately” notify the party and the Court once a party determines
8 that disclosure may be forthcoming. Obviously, the State knew before the day of the
9 disclosure that the evidence would be forthcoming. Nonetheless, the State did not
10 comply with the requirement that it immediately notify the Court and the defense of the
11 circumstances and when the disclosure would be made available. Instead, the State
12 waited until the day of the disclosure to provide any notice.

13 The State has also violated subsection (d) of Rule 15.6. The State did file an
14 affidavit but did not attest in the affidavit, because it is not true, that “the material or
15 information could not have been discovered or disclosed earlier even with due diligence
16 and the material or information was disclosed immediately upon its discovery.”

17
18 *1. The State’s lack of due diligence relating to Hartford Insurance policies*

19 The seven witnesses identified in the State’s 71st supplemental disclosure all
20 relate to the Hartford Insurance issues. The State has been aware of these life insurance
21 policies for two years. The State apparently did not ask about the payout of these life
22 insurance policies since 2008. The State has a duty to investigate its case. If it thought
23 that the payout of these policies was important, it should have inquired about them. The
24 State had a 2008 email from Mr. DeMocker to Hartford indicating that he was
25 attempting to arrange for payout of the policies to his daughters. The State’s failures
26 must lead the Court to conclude that this information could have been discovered and
27 disclosed much earlier with any inquiry from the State. These witnesses are disclosed
28

1 in violation of the State's duty to exercise due diligence, we are in the middle of trial
2 and these witnesses should be precluded under Rule 15.6.

3 The State has also disclosed additional Pittsford Federal Credit Union documents
4 (26641-26656) relating to account records for Mr. DeMocker's parents. These
5 documents relate to the payment of Mr. DeMocker's legal fees. There is absolutely no
6 reason that these documents are relevant, not to mention the issues of attorney-client
7 privilege and confidentiality. In addition, there is no reason why the State is disclosing
8 these two months after the commencement of trial. These documents should be
9 precluded under Rule 15.6 and Arizona Rules of Evidence 401 and 402. If the Court is
10 not inclined to preclude these documents on this basis, counsel request an in camera *ex*
11 *parte* hearing with the Court to address the sensitive issues of confidentiality and
12 privilege attendant to these records.

13 Likewise, the disclosure of the Probate File (26771-26794) is not relevant to the
14 issues in this criminal case and was available to the State since 2008. The State's
15 disclosure of this file three months in to trial is only based on the State's own lack of
16 due diligence. Furthermore, these documents should be precluded under Arizona Rules
17 of Evidence 401, 402 and 403. As outlined in the defense Objections to the State's Late
18 Disclosed, Irrelevant Hartford Documents and Witnesses filed on July 12, 2010, the
19 issues involved include probate laws, the administration and amendment of an estate
20 and a testamentary trust, confidential and attorney-client information of Mr. DeMocker,
21 Katie DeMocker as Trustee and Personal Representative and other complex and
22 confusing issues. Given the absence of any relevance, this information should be
23 precluded on the bases of these evidentiary rules as well.

24 In addition, any evidence about the settlement of the life insurance policies is not
25 relevant and would violate Rule 403 based on its potential to mislead, confuse and
26 prejudice the jury given the lack of any probative value. This issue was outlined in the
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28

1 defense's Objections to the State's Late Disclosed, Irrelevant Hartford Documents and
2 Witnesses filed on July 12, 2010, and incorporated herein.

3
4 *2. Precluded Jail Calls and Jail Visits*

5 It is unclear to the defense why the State wasted money in transcribing jail calls
6 and visits that it knows were precluded by prior order of the Court. Of the 12 calls
7 disclosed, only the calls from March 17, 2010 at 1039 and August 10 at 0155 have not
8 been precluded by prior court order.²

9 Furthermore, the Court's order requires calls and visits to be disclosed within
10 three days to be admissible. The State's disclosure of the July 2, 2010 visitation on July
11 12, 2010 is in violation of this order and is precluded on this basis. See April 13, 2010
12 minute entry.

13 *3. Jim Knapp documents (26795-26858)*

14 Jim Knapp died in January of 2009. His will and journal pages have been
15 available to the State since at least that time. Under Rule 15.6 the Court must consider
16 whether documents could have been discovered with the exercise of due diligence. It is
17 clear that these documents could have been so discovered by the State. The State makes
18 no attempt to explain why it has taken them until mid-trial, over a year and half to
19 obtain these documents. Therefore these documents should be precluded pursuant to
20 Rule 15.6(d).

21 In addition to the obvious 15.6 preclusion, these documents are not relevant and
22 should be precluded under Rules 401 and 402.

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24
25
26 ² Jail calls made before December 2009 are admissible if disclosed in 17805-17812. (See January 22, 2010
27 Transcript for Order of disclosure date; February 19, 2010, for State identification of bates numbers). Calls
28 between December 2009 through January 2010, are admissible if disclosed/identified by February 13, 2010. (See
January 22, 2010 Transcript). Calls between February and April 13, 2010 are admissible if disclosed by Tuesday,
April 20. (See April 13, 2010 Transcript). The State's disclosure for calls between this timeframe was in bates
numbers 18595-18600 and 20757-20759.

1
2 **CONCLUSION**

3 Defendant Steven DeMocker, by and through counsel, hereby requests that this
4 Court prohibit the State from offering testimony from the late disclosed witnesses or
5 from introducing late disclosed evidence disclosed in violation of Rule 15.6(c) and (d)
6 and this Court's prior orders.

7 DATED this 14 day of July, 2010.

8
9 By: 

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18 Attorneys for Defendant

19 **ORIGINAL** of the foregoing hand delivered for
20 filing this 14 day of July, 2010, with:

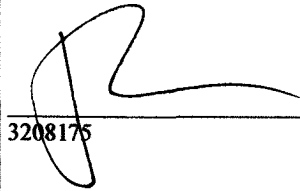
21 Jeanne Hicks
22 Clerk of the Court
23 Yavapai County Superior Court
24 120 S. Cortez
25 Prescott, AZ 86303

26 **COPIES** of the foregoing hand delivered this
27 this 14 day of July, 2010, to:

28 The Hon. Warren R. Darrow
Judge Pro Tem B
120 S. Cortez
Prescott, AZ 86303

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Joseph C. Butner, Esq.
Jeffrey Paupore, Esq.
Prescott Courthouse basket

A handwritten signature in black ink, appearing to be 'J. Paupore', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke.

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